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FRANK FERRARA and CHARLIE FERRARA

8
9 **UNITED STATES DISTRICT COURT**
10
11 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

12 CORY SPENCER, an individual; DIANA
13 MILENA REED, an individual; and
COASTAL PROTECTION RANGERS,
14 INC., a California non-profit public
benefit corporation,

15 Plaintiff,

16 vs.

17 LUNADA BAY BOYS; THE
INDIVIDUAL MEMBERS OF THE
18 LUNADA BAY BOYS, including but not
limited to SANG LEE, BRANT
BLAKEMAN, ALAN JOHNSTON AKA
19 JALIAN JOHNSTON, MICHAEL RAE
PAPAYANS, ANGELO FERRARA,
FRANK FERRARA, CHARLIE
20 FERRARA; CITY OF PALOS VERDES
ESTATES; CHIEF OF POLICE JEFF
KEPLEY, in his representative capacity;
21 and DOES 1-10,

22 Defendants.

23 Case No. 2:16-cv-2129
24 Judge: Hon. S. James Otero
Dept: Courtroom 10C
25 Magistrate Judge:
Hon. Rozella A. Oliver

26 **STATEMENT OF
UNCONTROVERTED FACTS
AND CONCLUSIONS OF LAW IN
SUPPORT OF CHARLIE
FERRARA'S MOTION FOR
SUMMARY JUDGMENT OR, IN
THE ALTERNATIVE, PARTIAL
SUMMARY JUDGMENT**

27 [Filed concurrently with Notice of
Motion; Memorandum of Points and
Authorities; Request for Judicial
Notice of Adjudicative Facts;
Declaration of Tiffany Bacon; and
[Proposed] Judgment lodged
herewith]

28 Date: August 21, 2017
Time: 10:00 a.m.
Dept: Courtroom 10C

Complaint Filed: March 29, 2016
Trial Date: November 7, 2017

7 **ISSUE 1:** Defendant is entitled to Summary Judgment on all of Plaintiffs'
8 claims, including Bane Act, Public Nuisance, Assault, Battery, and Negligence, as
9 Plaintiffs' claims are without merit.

10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27	UNCONTROVERTED FACTS AND CONCLUSIONS OF LAW	SUPPORTING EVIDENCE IN SUPPORT OF UNCONTROVERTED FACTS
1. Charlie Ferrara is the son of Defendant Frank Ferrara.	Declaration of Tiffany Bacon (“Bacon Decl.”), Ex. K (hereinafter “C. Ferrara Dep.”) at 17:7-17:8.	
2. Charlie Ferrara is the nephew to Defendant Angelo Ferrara and the cousin to Defendant N.F. Defendant Angelo Ferrara is also the father to non-party Leo Ferrara.	C. Ferrara Dep. at 18:2-18:19.	
3. Charlie Ferrara was in the presence of Plaintiff Reed on only two occasions prior to the filing of this action. The first was on February 13, 2016; however, he was not involved in the interactions she had with other individuals on that day. The second time was a couple of months	C. Ferrara Dep. at 117:19-131:21; 134:20-136:20.	

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28
4 after February 2016, where he saw 5 Plaintiff Reed sitting at the patio at 6 Lunada Bay but did not say anything to 7 her.	
8 4. Charlie Ferrara has never met Plaintiff 9 Spencer.	C. Ferrara Dep. at 175:5-175:8.
10 5. Prior to January of 2016, Plaintiff 11 Spencer never surfed at Lunada Bay.	Bacon Decl., Ex. L (hereinafter “Spencer Dep.”) at 62:10-62:22.
12 6. Plaintiff Spencer is unable to 13 distinguish one member of the Ferrara 14 family from the next.	Spencer Dep. at 219:9-219:20.
15 7. Plaintiff Reed never surfed at Lunada 16 Bay prior to January of 2016.	Bacon Decl., Ex. M (hereinafter “Reed Dep.”) at 104:23-105:6.
17 8. On February 13, 2016, Plaintiff Reed 18 visited the patio down at Lunada Bay.	Reed Dep. at 181:9-183:9; 202:24-204:9; 301:21-304:1; C. Ferrara Dep. at 117:19- 131:21.
19 20 9. Charlie Ferrara was near the corner of 21 the patio at Lunada Bay on February 13, 22 2016, in the morning, getting ready to go 23 surfing.	C. Ferrara Dep. at 117:19-131:21.
24 25 10. Charlie Ferrara observed Plaintiff 26 Reed, a second woman, Defendant Brant 27 Blakeman and Defendant Alan Johnston 28 on the patio that morning of February 13,	C. Ferrara Dep. at 117:19-131:21.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	UNCONTROVERTED FACTS AND CONCLUSIONS OF LAW	SUPPORTING EVIDENCE IN SUPPORT OF UNCONTROVERTED FACTS
	2016 at Lunada Bay.	
11. Charlie Ferrara did not participate in the interaction that took place between Plaintiff Reed, Defendant Brant Blakeman, Defendant Alan Johnston and the other person and did not hear the words that were exchanged among the group.		C. Ferrara Dep. at 120:5-134:8.
12. On February 13, 2016, Charlie Ferrara was only concerned about getting in the water to surf because he had a short amount of time to do so before he had to go to work.		C. Ferrara Dep. at 117:19-123:18.
13. When Charlie Ferrara returned to the beach from surfing, there were two police officers present.		C. Ferrara Dep. at 124:24-128.21.
14. Plaintiff Reed recorded a conversation she claims was between her and Charlie Ferrara.		Reed Dep. at 270:21-271:4.
15. The man speaking in the recording is actually Charlie Ferrara's cousin, Leo Ferrara.		Bacon Decl., Ex. N (hereinafter "Leo Decl.").
16. Defendant N.F., Leo Ferrara's brother, identified Leo Ferrara's voice in		Bacon Decl., Ex. O (hereinafter N.F. Dep.") at 142:24 – 143:9.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28
UNCONTROVERTED FACTS AND CONCLUSIONS OF LAW	SUPPORTING EVIDENCE IN SUPPORT OF UNCONTROVERTED FACTS
the recording.	
17. Leo Ferrara states in the recording that he lives on the Palos Verdes peninsula and that his father works on cars.	Bacon Decl., Ex. P (hereinafter "Reed Recording"); Bacon Decl., Ex. S (hereinafter "Recording Transcript") at 3.
18. Defendant Angelo Ferrara, Leo Ferrara's father, lives in Palos Verdes Estates at the time of the recording.	Bacon Decl., Ex. Q (hereinafter "Angelo Dep.") at 9:8-9:15.
19. Defendant Frank Ferrara, Charlie Ferrara's father, lives in Wildomar.	Bacon Decl., Ex. R (hereinafter "F. Ferrara Dep.") at 18:2-18:3.
20. Charlie Ferrara lives in San Pedro, and previously lived with his parents in Wildomar.	C. Ferrara Dep. at 16:3-16:17.
21. Defendant Frank Ferrara does not work on cars; he is in car sales.	F. Ferrara Dep. at 37:3 – 39:14; C. Ferrara Dep. at 17:7-17:13.
22. Defendant Angelo Ferrara owns an auto paint and body shop.	C. Ferrara Dep. at 18:2-18:6.
23. Ken Claypool could not identify Charlie Ferrara, stating he would "have to see pictures and determine actually who's who" of the defendants.	Bacon Decl., Ex. U (hereinafter "Claypool Dep.") at 48:3-48:24, 49:10-50:6.
24. Mr. Claypool misidentified Charlie Ferrara as having dark hair, when in fact Charlie Ferrara has blonde hair.	Claypool Dep. at 90:25-91:3; Bacon Decl., Ex. T (hereinafter "Charlie Photo").

1 2 3 UNCONTROVERTED FACTS AND CONCLUSIONS OF LAW	SUPPORTING EVIDENCE IN SUPPORT OF UNCONTROVERTED FACTS
4 25. Ken Claypool did not testify to ever 5 witnessing Charlie Ferrara threaten or 6 intimidate anyone at Lunada Bay, engage 7 in any wrongful behavior at Lunada Bay, 8 or be involved in any physical altercation 9 with anyone at Lunada Bay.	Claypool Dep. at 51:19-53:6; 91:4-91:16.
10 26. Mr. Claypool never had any 11 conversations with Plaintiff Reed or 12 Plaintiff Spencer about any actions of 13 Charlie Ferrara at Lunada Bay.	Claypool Dep. at 52:4-52:13.
14 27. Mr. Claypool's knowledge of 15 Charlie Ferrara comes not from personal 16 experiences with him, but rather from 17 Facebook posts and gossip.	Claypool Dep. at 88:8-89:25.
18 28. Mr. Claypool testified he only heard 19 secondhand Charlie Ferrara was one of 20 the individuals that harassed Plaintiff 21 Reed, not that he had any personal 22 knowledge of relevant facts.	Claypool Dep. at 89:3-89:25.
23 29. Jim Russi has no knowledge of 24 Charlie Ferrara engaging in any wrongful 25 conduct at or near Lunada Bay nor 26 Charlie Ferrara being involved in any 27 illegal activity at or near Lunada Bay.	Bacon Decl., Ex. V (hereinafter "Russi Decl.").

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1 **UNCONTROVERTED FACTS AND**
 2 **CONCLUSIONS OF LAW**

**SUPPORTING EVIDENCE IN
 SUPPORT OF UNCONTROVERTED
 FACTS**

4 30. Plaintiffs have not provided a single
 5 discovery response tying any action or
 6 inaction of Charlie Ferrara to Plaintiffs'
 7 claimed damages in this case. Plaintiffs
 8 rely on the 13-minute recording between
 9 Plaintiff Reed and Leo Ferrara, which
 10 does not contain the voice of Charlie
 11 Ferrara.

Bacon Decl., Ex. W; Leo Decl.; N.F.
 Dep. at 142:25 – 143:9.

12 31. Defendant Sang Lee testified that
 13 Charlie Ferrara has never had any
 14 communications with him about
 15 preventing persons from visiting Lunada
 16 Bay, or any communications about
 17 preventing persons from surfing at
 18 Lunada Bay.

Bacon Decl., Ex. X (hereinafter “Lee
 Dep.”) at 295:6-295:25.

19 32. Charlie Ferrara testified that he has
 20 communicated with Defendant Sang Lee,
 21 by telephone, regarding some work that
 22 Defendant Sang Lee provided for him for
 23 roofing in 2014.

C. Ferrara Dep. at 47:25-48:21.

24 33. Charlie Ferrara has not
 25 communicated with any other defendant
 26 in any manner to support Plaintiffs'
 27 claims in this case.

C. Ferrara Dep. at 47:25-50:21.

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28
UNCONTROVERTED FACTS AND CONCLUSIONS OF LAW					SUPPORTING EVIDENCE IN SUPPORT OF UNCONTROVERTED FACTS																						

34. Defendant Sang Lee has never witnessed Charlie Ferrara attempting to prevent persons from visiting or surfing Lunada Bay.

Lee Dep. at 295:6-295:25.

Alternatively, Charlie Ferrara requests partial summary judgment on the following causes of action only:

ISSUE 2: Defendant is entitled to Partial Summary Judgment on Plaintiffs' First Cause of Action for Bane Act, as Plaintiffs' claim is without merit.

13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28		
UNCONTROVERTED FACTS AND CONCLUSIONS OF LAW					SUPPORTING EVIDENCE IN SUPPORT OF UNCONTROVERTED FACTS												

Charlie Ferrara incorporates Uncontroverted Facts and Conclusions of Law Nos. 1 through 34 by this reference as though fully set forth herein.

Charlie Ferrara incorporates Supporting Evidence to Uncontroverted Facts and Conclusions of Law Nos. 1 through 34 by this reference as though fully set forth herein.

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1 **ISSUE 3:** Defendant is entitled to Partial Summary Judgment on Plaintiffs'
 2 Second Cause of Action for Public Nuisance, as Plaintiffs' claim is without merit.

3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	
UNCONTROVERTED FACTS AND CONCLUSIONS OF LAW				SUPPORTING EVIDENCE IN SUPPORT OF UNCONTROVERTED FACTS																						

1 **ISSUE 4:** Defendant is entitled to Partial Summary Judgment on Plaintiffs'
 2 Sixth Cause of Action for Assault, as Plaintiffs' claim is without merit.

14	15	16	17	18	19	20	21	22	23	24	25	26	27	28
UNCONTROVERTED FACTS AND CONCLUSIONS OF LAW				SUPPORTING EVIDENCE IN SUPPORT OF UNCONTROVERTED FACTS										

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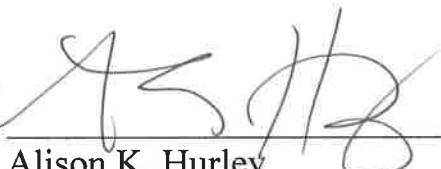
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1 **ISSUE 5:** Defendant is entitled to Partial Summary Judgment on Plaintiffs'
2 Seventh Cause of Action for Battery, as Plaintiffs' claim is without merit.

3 UNCONTROVERTED FACTS AND	4 SUPPORTING EVIDENCE IN
5 CONCLUSIONS OF LAW	6 SUPPORT OF UNCONTROVERTED
7 Charlie Ferrara incorporates 8 Uncontroverted Facts and Conclusions of 9 Law Nos. 1 through 34 by this reference 10 as though fully set forth herein.	Charlie Ferrara incorporates Supporting Evidence to Uncontroverted Facts and Conclusions of Law Nos. 1 through 34 by this reference as though fully set forth herein.

11
12 Dated: July 21 2017

13 BREMER WHYTE BROWN & O'MEARA
14 LLP

15 By: 

16 Alison K. Hurley
17 Tiffany L. Bacon
18 Attorneys for Defendants
19 FRANK FERRARA and CHARLIE
20 FERRARA

PROOF OF SERVICE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 20320 S.W. Birch Street, Second Floor, Newport Beach, California 92660.

On July 24, 2017, I served the within document(s) described as:

STATEMENT OF UNCONTROVERTED FACTS AND CONCLUSIONS OF LAW IN
SUPPORT OF CHARLIE FERRARA'S MOTION FOR SUMMARY JUDGMENT OR, IN THE
ALTERNATIVE, PARTIAL SUMMARY JUDGMENT

on the interested parties in this action as stated on the attached mailing list.

(BY ELECTRONIC SERVICE) Complying with Code of Civil Procedure § 1010, I caused such document(s) to be Electronically Filed and Served through the _____ for the above-entitled case. Upon completion of transmission of said document(s), a filing receipt is issued to the filing party acknowledging receipt, filing and service by _____'s system. A copy of the [Email receipt System] filing receipt page will be maintained with the original document(s) in our office.

Executed on July 24, 2017, at Newport Beach, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Hailey Williams
(Type or print name)

Hailey Williams
(Signature)

Cory Spencer v. Lunada Bay Boys et al.,

Case No. 2:16-cv-2129-SJO

**BWB&O CLIENT: Frank and Charlie Ferrara
BWB&O FILE NO.: 1178.176**

SERVICE LIST

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